

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RODNEY JEROME WOMACK,

Petitioner,

v.

WARDEN,

Respondent.

Case No. 18-01636 BLF (PR)

**ORDER TO SHOW CAUSE;
GRANTING MOTION FOR
EXTENSION OF TIME; GRANTING
MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS***

(Docket Nos. 5 & 6)

Petitioner, a California prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising a claim related to his state conviction out of Contra Costa County Superior Court.¹ Petitioner has filed a motion for extension of time, (Docket No. 6), and a motion for leave to proceed *in forma pauperis*, (Docket No. 5).

DISCUSSION

I. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in

¹ This matter was reassigned to this Court on March 23, 2018. (*See* Docket Nos. 3 & 4.)

1 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
2 § 2254(a).

3 It shall “award the writ or issue an order directing the respondent to show cause
4 why the writ should not be granted, unless it appears from the application that the applicant
5 or person detained is not entitled thereto.” *Id.* § 2243.

6 **II. Legal Claims**

7 Petitioner claims that he was convicted of second degree robbery in 2005, and that
8 he is challenging not that particular sentence, but the two 1982 robbery prior strikes that
9 were used to enhance his sentence. (Pet. at 2.) Specifically, Petitioner asserts that he was
10 “denied counsel representation” and did not receive an “open court admonition/waiver [of]
11 rights” for the two 1982 priors. (*Id.* at 6-7.)

12 A petitioner generally may not attack the constitutionality of a prior conviction used
13 to enhance a later sentence. “[O]nce a state conviction is no longer open to direct or
14 collateral attack in its own right because the defendant failed to pursue those remedies
15 while they were available (or because the defendant did so unsuccessfully), the conviction
16 may be regarded as conclusively valid. If that conviction is later used to enhance a
17 criminal sentence, the defendant generally may not challenge the enhanced sentence
18 through a petition under § 2254 on the ground that the prior conviction was
19 unconstitutionally obtained.” *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394,
20 403-04 (2001) (citation omitted); *see also United States v. Martinez-Martinez*, 295 F.3d
21 1041, 1043-44 (9th Cir. 2002) (bar against collateral attacks on prior convictions also
22 applies where sentencing court declined to reduce sentence based on circumstances of
23 prior conviction).

24 The only exception the Court expressly recognized to this rule is for a claim that the
25 prior conviction was unconstitutional because there was a failure to appoint counsel in
26 violation of the Sixth Amendment right to counsel as set forth in *Gideon v. Wainwright*,
27 372 U.S. 335 (1963). *See Coss*, 532 U.S. at 404; *Daniels v. United States*, 532 U.S. 374,
382 (2001). The Ninth Circuit has recognized another: “[W]hen a defendant cannot be

1 faulted for failing to obtain timely review of a constitutional challenge to an expired prior
2 conviction, and that conviction is used to enhance his sentence for a later offense, he may
3 challenge the enhanced sentence under § 2254 on the ground that the prior conviction was
4 unconstitutionally obtained.” *Dubrin v. California*, 720 F.3d 1095, 1099 (9th Cir. 2013)
5 (state courts incorrectly dismissed petitioner’s state habeas petitions on ground that he was
6 no longer in custody although petitioner was still on parole and therefore still in custody).

7 These exceptions appear to apply to Petitioner’s challenge of the two 1982 prior
8 convictions used to enhance his current sentence based on the allegation that he was denied
9 right to counsel. Accordingly, the claim is cognizable under § 2254 and merits an answer
10 from Respondent.

11 **III. Motion for Extension of Time**

12 Petitioner filed this federal habeas action on March 16, 2018. (Docket No. 1.) On
13 the same day, the Clerk sent Plaintiff a notice that he had failed to pay the Court filing fee
14 or file an *In Forma Pauperis* (“IFP”) Application. (Docket No. 2.) Petitioner was directed
15 to file a response within twenty-eight days of the notice to avoid dismissal, such that he
16 had until April 13, 2018. (*Id.*)

17 On April 23, 2018, Petitioner filed a motion for an extension of time, which he
18 signed on April 17, 2018, to file his IFP application in order to follow up with the prison
19 trust account office regarding supporting documentation. (Docket No. 6.) On the same
20 day, the Court received a complete IFP application bearing Petitioner’s signature dated
21 April 3, 2018. (Docket No. 5.) Good cause appearing, Petitioner’s motion for an
22 extension of time is GRANTED such that the IFP application filed on April 23, 2018, is
23 deemed timely filed.

24 **CONCLUSION**

25 For the foregoing reasons and for good cause shown,

- 26 1. Petitioner’s motion for an extension of time, (Docket No. 6), is **GRANTED**.
27 Petitioner’s motion for leave to proceed *in forma pauperis*, (Docket No. 5), is **GRANTED**.
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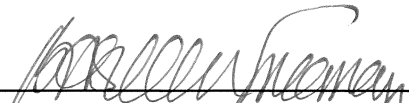
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This order terminates Docket Nos. 5 and 6.

IT IS SO ORDERED.

Dated: May 16, 2018


BETH LABSON FREEMAN
United States District Judge